

The Rejection of Claims 1-3, 6 and 10 Under 35 U.S.C. §102

The Final Office Action rejected Claims 1-3, 6, and 10 under 35 U.S.C. §102(b) as being anticipated by Rodriguez et al. (USPN 5,330,119). The specific basis for this rejection appears to be "Fig. 9." Applicants respectfully traverse the rejection.

35 U.S.C. §102(b) provides that "a person shall be entitled to a patent unless the invention was patented or described in a printed publication . . . more than one year prior to the date of the application." Accordingly, a rejection based on anticipation requires that the four corners of a single, prior art document describe each and every element of the claimed invention, either expressly or inherently, such that a person of ordinary skill in the art could practice the invention without undue experimentation. *See Atlas Powder Co. v. Ireco, Inc.*, 51 U.S.P.Q.2d 1943, 1947 (Fed. Cir. 1999).

Independent Claim 1 has been amended to recite: "a snubber arm having integral first and second sections arranged at an obtuse angle to one another, said snubber arm pivotably mounted to said base plate at a first end of said first section of said snubber arm and arranged for pivoting rotation about a pivot point proximate said base plate" and "an actuator mounted to said base plate, and arranged to effect a pivoting movement of said snubber arm relative to said base plate, wherein said actuator is connected to said first section of said snubber arm between said pivot point and said second section of said snubber arm." Support for these amendments can be found in Figures 3-5, 7, 8A, and 8B and paragraphs [0030] and [0032]. Thus, no new matter has been added by the amendment.

A. Rodriguez does not describe each and every element of the claimed invention as recited in amended Claim 1.

Neither the entire Rodriguez reference, nor specifically, Figure 9 of Rodriguez, either expressly or inherently, teach the Claim 1 element of: "a snubber arm having integral first and second sections arranged at an obtuse angle to one another, said snubber arm pivotably mounted to said base plate *at a first end* of said first section of said snubber arm..." In Figure 9, Rodriguez teaches a bellcrank arm 270 pivotably mounted to a base frame 268 at a point between

the ends of the arm 270. Thus, Rodriguez does not pivotally connect an arm to a base plate at one end.

Neither the entire Rodriguez reference, nor specifically, Figure 9 of Rodriguez, either expressly or inherently, teach the Claim 1 element of: “an actuator mounted to said base plate, and arranged to effect a pivoting movement of said snubber arm relative to said base plate, wherein said actuator is connected to said first section of said snubber arm between said pivot point and said second section of said snubber arm.” Rodriguez teaches a cylinder 274 connected to one end of the arm 270. Rodriguez does not connect an actuator to a snubber bar between a pivot point and a second section of the snubber bar.

B. Rodriguez does not inherently teach the elements of amended Claim 1.

Rodriguez does not inherently teach the Claim 1 elements of: “a snubber arm having integral first and second sections arranged at an obtuse angle to one another, said snubber arm pivotably mounted to said base plate *at a first end* of said first section of said snubber arm...” or “an actuator mounted to said base plate, and arranged to effect a pivoting movement of said snubber arm relative to said base plate, wherein said actuator is connected to said first section of said snubber arm between said pivot point and said second section of said snubber arm.” In fact, the aforementioned elements of Claim 1 are contrary to the arrangement taught in Rodriguez. Thus, a complete reconfiguration of Rodriguez is required to create the aforementioned elements of Claim 1. For example, the arm 270 must be re-tooled to create a different pivot point and a different connection point for the cylinder 274. Also, the configuration of base frame 268 only makes sense given the arm and cylinder arrangement shown in Figure 9. Rodriguez contains no teaching or motivation to execute such a re-tooling or reconfiguration and is silent regarding any advantage regarding re-tooling or reconfiguring his arrangement to match the elements of Claim 1.

For the reasons set forth above, Applicants respectfully submit that Rodriguez does not anticipate Claim 1 and reconsideration of the rejection is requested. Claims 2, 3, 6, and 10, dependent from Claim 1, also are patentable in light of the cited reference.

The Rejection of Claims 7-9 and 11-12 Under 35 U.S.C. §103

The Office Action rejected Claims 7-9 and 11-12 under 35 U.S.C. §103(a) as being unpatentable over Rodriguez et al. (USPN 5,330,119). Applicants respectfully traverse the rejection.

A. Rodriguez does not teach, suggest, or motivate the modification of Rodriguez to create the present invention as recited in Claim 1.

Rodriguez contains no teaching, suggestion, or motivation to pivotably mount a snubber arm to a base plate at a first end of the snubber arm, or to connect an actuator between a pivot point and a second section of the snubber bar. As noted *supra*, a significant re-tooling and/or reconfiguration of Rodriguez is necessary to create the invention recited in Claim 1. Such re-tooling/reconfiguration actually teaches away from the invention recited in Claim 1.

B. Rodriguez does not teach or suggest all the claim limitation recited in Claim 1.

Rodriguez does not, expressly or inherently, teach all the claim limitations recited in amended Claim 1 as shown *supra* in the arguments regarding Claims 1-3, 6, and 10. Rodriguez does not contain any inherent teaching regarding the claim limitations recited in amended Claim 1 as shown *supra* in the arguments regarding Claims 1-3, 6, and 10. Thus, Rodriguez does not suggest all the limitations of Claim 1, specifically, to pivotably mount a snubber arm to a base plate at a first end of the snubber arm, or to connect an actuator between a pivot point and a second section of the snubber bar. In fact, the significant re-tooling/reconfiguration of Rodriguez's cylinder system, base frame/flange, and bellcrank arm required to create the invention recited in amended Claim 1 is evidence of *prima facie* non-obviousness.

For the reasons set forth above, Applicants respectfully submit that Claim 1 is patentable over Rodriguez. Claims 7-9 and 11-12, dependent from Claim 1, also are patentable in light of the cited reference.

The Rejection of Claims 4-5 Under 35 U.S.C. §103

The Office Action rejected Claims 4-5 under 35 U.S.C. §103(a) as being unpatentable over Rodriguez et al. (USPN 5,330,119) in view of Orii (USPN 4,589,605). Applicants respectfully traverse the rejection.

A. The references cited by the Examiner do not teach, suggest, or motivate the modification of the references to create the present invention as recited in Claim 1.

As shown *supra* in the arguments regarding Claims 7-9 and 11-12, Rodriguez does not teach, suggest, or motive the Claim 1 elements of pivotably mounting a snubber arm to a base plate at a first end of the snubber arm, or connecting an actuator between a pivot point and a second section of the snubber bar. Orii does not cure the defects of Rodriguez. Orii teaches, suggests, and motivates a coil holding member with a pivot point located between the ends of the member. Further, Orii teaches and suggests connecting a cylinder to one end of the member. Like Rodriguez, a significant re-tooling and/or reconfiguration of Orii is necessary to create the invention recited in Claim 1. Thus, like Rodriguez, Orii teaches away from the invention recited in Claim 1. Therefore, Rodriguez in view of Orii does not teach, suggest, or motivate the Claim 1 elements of pivotably mounting a snubber arm to a base plate at a first end of the snubber arm, or connecting an actuator between a pivot point and a second section of the snubber bar.

B. Rodriguez and Orii do not teach or suggest all the claim limitations recited in amended Claim 1.

Rodriguez does not teach or suggest all the limitations recited in Claim 1 as shown *supra* in the arguments regarding Claims 7-9 and 11-12. Orii does not cure the defects of Rodriguez. Orii teaches and suggests a coil holding member with a pivot point located between the ends of the member and connecting a cylinder to one end of the member. Therefore, Rodriguez in view of Orii does not teach or suggest the Claim 1 limitations of pivotably mounting a snubber arm to a base plate at a first end of the snubber arm, or connecting an actuator between a pivot point and a second section of the snubber bar. In fact, the significant reconfiguration of the Rodriguez and Orii systems required to create the invention recited in amended Claim 1 is evidence of *prima facie* non-obviousness.

Attorney Docket No. ELRP:101US
U.S. Patent Application No. 09/954,766
Reply to Decision on Appeal dated August 20, 2004
Amendment and Request for Reconsideration dated: October 20, 2004

For the reasons set forth above, Applicants respectfully submit that Claim 1 is patentable over Rodriguez in view of Orii. Claims 4-5, dependent from Claim 1, also are patentable in light of the cited references.

Conclusion

The foregoing is submitted as a full and complete response to the Office Action. Applicants respectfully submit that the present application is now in condition for Issue, which action is courteously requested. The Examiner is invited and encouraged to contact the undersigned attorney of record if such contact will facilitate an efficient examination and allowance of the application.

Respectfully submitted,



C. Paul Maliszewski
Registration No. 51,990
CUSTOMER NO. 24041
Simpson & Simpson, PLLC
5555 Main Street
Williamsville, NY 14221
Telephone: (716) 626-1564
Facsimile: (716) 626-0366

Dated: October 20, 2004
CPM